

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FILED

JUAN DAVILA-BAJANA,

PLAINTIFF,

-VS-

TIM HOLOHAN, ET AL.,

DEFENDANTS.

'07 JUL 17 A3:45

CLERK  
U.S. DISTRICT COURT

CIVIL ACTION No. 04-253E

JUDGE: HON. SEAN J. MCLAUGHLIN

MAGISTRATE: SUSAN P. BAXTER

PLAINTIFF'S REPLY TO DEFENDANT'S MOTION

IN OPPOSITION TO PLAINTIFF'S FIRST AMENDED COMPLAINT

On July 10, 2007, Defendants filed a Motion in Opposition to Plaintiff's First Amended Complaint. Plaintiff had filed an Amended Complaint on June 12, 2007. For the following reasons, this Honorable Court should reject Defendant's Motion and allow Plaintiff's Complaint to be Amended.

First, Plaintiff has followed the Federal Rules of Civil Procedure regarding the amendment of pleadings. Federal Rules of Civil Procedure, Rule 15(a) states:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served ... **Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.** (Bold added for emphasis)

The Court ordered "leave" in its Order of 12/08/06. While it was sua sponte by the Court, it was nonetheless ordered.

Rule 15(a) in Defendant's Opposition does not condition leave upon Motion only. The Rule clearly states that a party may amend its pleading by leave of Court, which was granted in this instance.

Also, Plaintiff did not intend to do more than re-allege his allegations in a better syntax. And he left all original Counts simply not to divest the Court of its jurisdiction: both District and Appellate Courts of all his Claims.

But the First Amended Complaint does set forth an additional Count of Retaliation based in Defendant's Pleadings and Omissions. Which is within the normal realm of Amended Complaints.

Finally, the Amended Complaint is intended to conform to the materials now placed before the Court. (See: Complaint). As such, it is nothing more than a final pretrial conference -- which often includes the submission of an Amended Complaint.

Plaintiff has no doubt that the Defendants intend to file as many time consuming motions as possible. And no matter when he files his Amended Complaint, they will undoubtedly file an attack on same. So doing it now is the better use of precious judicial resources.

#### CONCLUSION


For the above stated reasons, the Court should accept Plaintiff's First Amended Complaint and allow the case to proceed to Trial on same.

Respectfully Submitted

DECLARATION AND CERTIFICATE OF SERVICE

I, Juan Davila-Bajana, hereby declare and affirm, under penalty of perjury pursuant to USC 1746(2), that the foregoing pleading is true and correct to the best of my knowledge, this 15th day of July, 2007, and that I served, by first-class postage prepaid surrender to prison officials, a true and correct original of the foregoing pleading, the 15th day of July, 2007, to:

1. Paul D. Kovac, AUSA  
700 Grant St., Suite 4000  
Pittsburgh, PA 15219
2. Clerk of Court  
USDC for W.D. of PA  
P.O. Box 1820  
Erie, PA 16501

  
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Juan Davila-Bajana, Pro SE  
Fed. Reg. No. 47580-053  
FCI McKean  
P.O. Box 8000  
Bradford, PA 16701